

A Homeowner's Guide to *Preventing Mechanic's Liens*

When you hire a prime contractor to do construction on your home, he or she typically hires laborers and subcontractors to do some of the work, and purchases materials for the job from materials suppliers. No one would dispute that a homeowner should pay for goods or services provided to improve their home. If the contractor—or the subcontractors, workers or suppliers—who provide goods or services to improve your property aren't paid, they can file what is called a mechanic's lien on your home.

What is a
Mechanic's Lien?

A mechanic's lien is a "hold" against your property that, if unpaid, allows a foreclosure action, forcing the sale of your home. It is recorded with the County Recorder's office by the unpaid contractor, subcontractor or supplier. It means that any of these unpaid entities can claim a lien against the property until they are paid.

The prime contractor has a direct contractual agreement with the homeowner. If the contractor isn't paid, he can sue on the contract and record a mechanic's lien. But subcontractors, workers and suppliers don't have a contract with the homeowner. A problem occurs when the homeowner pays the prime contractor for all or some of the work, but the prime contractor fails to pay the laborers, subcontractors and materials suppliers that were hired to do portions of the job. If they are not paid, often their only recourse is to file a mechanic's lien on the home.

What happens when a lien is filed against your property?

A lien can result in a range of problems:

- **Foreclosure**, if the homeowner doesn't pay off the lien or cannot afford to do so;
- **Double payment for the same job**—if the homeowner pays the prime contractor—and then has to pay the sub or supplier who wasn't paid by the prime;
- **A cloud on the title of the property**, which can affect the homeowner's ability to borrow against, refinance, or sell the property.

How can you protect yourself?

You can protect yourself from unwarranted liens by carefully selecting your contractor and responsibly managing your construction project.

Investigate your prime contractor before you sign a contract and do the following:

- Hire only licensed contractors and check the contractor's license status on CSLB's Web site at www.cslb.ca.gov.
- Make sure your contractor hires only licensed subcontractors, and check their licenses, too.
- Check with your local courthouse to see if the prime contractor has a history of litigation.
- Get a list of all subcontractors, laborers, and materials suppliers to be used by your prime contractor.
- Check with suppliers and workers about the payment history of the prime contractor.

Get a written contract and make sure it includes the following:

- A schedule that demonstrates when specific construction activities will start and end, (such as the framing, sheetrock work, or painting) and the projected payments tied to the contract price of these activities.
- Identification of subcontractors who will be performing these construction activities.
- Identification of suppliers who are providing materials necessary for these activities.

The Preliminary 20-Day Notice

If you receive a Preliminary 20-Day Notice, don't panic. The preliminary notice isn't a lien; it is a notice that a subcontractor or supplier has provided or will be providing goods and services to improve your property and could file a lien claim if they are not paid.

Don't expect a 20-Day Notice from a prime contractor, however—since they have a direct contract with you, they aren't required to send a 20-Day Notice.

These notices allow you to track who has a potential claim against your property. Subcontractors and suppliers *must* provide you with this notice in order to maintain their right to file a lien. **If they don't provide you with the notice, they lose the right to file a lien.**

Watch the timing, however. A subcontractor or supplier can give you the Preliminary Notice **before** delivering supplies or starting work and up to 20 days **after** delivering supplies or starting work.

Preventing liens

Before you pay your prime contractor, deal with the possibility of a lien. The first step is to keep track of Preliminary 20 Day Notices and make sure you are aware of who your potential lien claimants are.

There are a few specific methods you can use to make sure potential lien claimants have been paid:

JOINT CHECKS

Joint checks are the simplest method of lien prevention. When the contractor presents a bill for materials or labor, compare it to the schedule of payments in your contract and the Preliminary 20-Day Notices you've received. Make sure that work was provided as described and then make out the check to both the contractor and the supplier, or the contractor and the subcontractor. Both parties will have to endorse the check, which will ensure that the subcontractors and suppliers get paid.

LIEN RELEASES

The release system is designed to allow property owners to track when potential lien claimants have been paid.

Here's how the lien release system works:

- Before you make a payment, you should first get a signed *conditional* release from the possible lien claimants.
- You or your contractor can download a copy of this release from CSLB's Web site at www.cslb.ca.gov. The prime contractor is required to get this release for you from the potential lien claimants, **if you ask for it**.
- After you receive the conditional releases, make the appropriate payment for the work that was done.
- After you pay, the contractor should get you an *unconditional* release signed by each of the claimants paid for the portion of the work being released. Make sure that the actual claimant signs the unconditional release.
- By law, you may withhold the next payment until you get the unconditional releases for the previous payment.

NOTICE OF COMPLETION

You can reduce the amount of time a contractor, subcontractor or supplier has to record a claim by filing a Notice of Completion with the County Recorder's office after work is completed.

This notice reduces the amount of time a contractor has to record a mechanic's lien from 90 to 60 days, and reduces the time a subcontractor or materials supplier has to record a mechanic's lien from 90 days to 30 days.

There is a lien on your property—now what?

There are a number of reasons a lien might be invalid; for example, the work was not completed or the supplies were not incorporated into the structure. If a lien is placed on your home, you may want to consult an attorney for help in releasing the lien or identifying these issues.

Often, many lien claims are invalid because the contractor, subcontractor or materials supplier has failed to meet the required timelines for filing the claim. Review the Lien Requirements Checklist on the next page to determine if the claimant followed the required timelines.

Lien Requirements Checklist

- ☒ **Check to see if the Preliminary 20-Day Notice was given to you within the strict time frames.**

A subcontractor or materials supplier has *until 20 days after* beginning work or delivering materials to serve you a Preliminary 20-Day Lien Notice. If the notice is late, the claimant loses lien rights for work done or materials delivered more than 20 days before the notice. The claim against your property isn't valid if this time frame is not followed. Laborers don't need to give you the 20-Day Notice.

- ☒ **Check to see if the potential lien claimant filed the mechanic's lien within the legal time frame.**

The potential lien claimant must record the mechanic's lien within 90 days of:

- Completion of work
- When owner began using the improvement,* or
- When owner accepted the improvement.

If the potential lien claimant fails to record the mechanic's lien within the appropriate timeframe, the lien isn't valid. Once a mechanic's lien is recorded, it attaches to your title and must be removed.

As previously mentioned, if you recorded a Notice of Completion, a prime contractor has 60 days to record a lien while a subcontractor or materials supplier has 30 days to record a lien.

- ☒ **Check with the Superior Court to see if the subcontractor or materials supplier filed a timely Lien Foreclosure Action.**

A lien foreclosure action is a lawsuit to foreclose the mechanic's lien. The lien claimant must file a lien foreclosure action within 90 days of the date that he or she recorded the mechanic's lien. Often a lien claimant with a valid claim will fail to follow through, making the lien invalid.

If the contractor, subcontractor or materials supplier fails to follow any of these strict time frames, you can petition the Superior Court to remove the lien.

Be aware that, although anyone can *record* a mechanic's lien, unlicensed contractors cannot *foreclose* on a mechanic's lien if the work is valued at more than \$500.

*This point is often hard to verify because the homeowner is often occupying the residence during construction. You might want to contact an attorney for assistance on this point.

Why should you remove an invalid lien?

Even when a contractor, subcontractor or materials supplier doesn't act to foreclose on your property, the lien stays on the county records as a "cloud" on your property title until you take action to remove it. An invalid lien can make it difficult or impossible to refinance or sell your home.

Steps to remove an invalid lien

Follow the steps below to begin the process of removing an invalid lien:

- Send the lien claimant a written request by certified mail. Keep a copy of your letter and the certification as proof of your request. Include:
 - Deviations you've identified from the Lien Requirements Checklist.
 - A request for the claimant to remove the lien. Remind the claimant that, if the lien isn't removed and you have to get an attorney to remove it, the court can award you attorney fees of up to \$2,000.
- Keep your documentation. You may need to demonstrate to a court that "the lien claimant is unable or unwilling to execute a release of the lien or cannot, with reasonable diligence, be found." (*Civil Code Section 3154*)
- Send the request to the claimant's last known address. Do your homework to verify that you have the correct last known address.

Sometimes, sending the letter is enough to persuade the lien claimant to release the lien.

Petition to release the property from the lien

If the lien claimant doesn't remove the invalid lien, and the time has expired to record the mechanic's lien and take action to foreclose, you may petition the court for a decree to release the property from the lien. This is a complicated process that may require the services of an attorney. Refer to Section 3154 of the Civil Code for more information.

Civil Code Section 3154 (f) provides that if you use an attorney **and you prevail**, you are entitled to attorneys' fees up to \$2,000.

Minimize your risks and take steps to protect your home

The mechanic's lien law is complicated and confusing, and there are real risks involved for homeowners. Don't risk foreclosure, a cloud on your title, or having to pay twice for the same job. You **can** take steps to avoid these problems by preparing for the possibility of a lien and employing the safeguards in this booklet to protect your home and your financial stability.



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